



## ***CLOSED CASE SUMMARY***

ISSUED DATE: FEBRUARY 28, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0317

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.140-Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)
# 2	5.001-Standards and Duties 5.001-POL 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 3	15.180-Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Sustained
# 4	15.180-Primary Investigations 15.180-POL 5. Officers Shall Document all Primary Investigations on a Report	Allegation Removed
# 5	15.020-Charge-By-Officer (CBO) 15.020 - PRO - 1 (Utilizing CBO) Officer	Not Sustained (Training Referral)

#### **Imposed Discipline**

Oral Reprimand
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#### **Named Employee #2**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	15.020-Charge-By-Officer (CBO) 15.020 - PRO - 1 (Utilizing CBO) Sergeant	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employees violated SPD policy by not effecting a custodial arrest of his assailant and, instead, using the "Charge-By-Officer" (CBO) program. Specifically, the Complainant alleged that Named Employee #1 (NE#1) engaged in biased policing, used unreasonable discretion, failed to conduct an adequate investigation, and violated the CBO Procedure. Also, the Complainant alleged that Named Employee #2 (NE#2), a supervisor, failed to adequately supervise NE#1.

### **SUMMARY OF INVESTIGATION:**

The Complainant contacted OPA on July 3, 2021 to report that he had just been assaulted by another resident (Assailant) of his building, but that the responding officer – NE#1 – informed the Complainant that he "was not going



to do anything about the assault.” The Complainant believed that nothing would happen with his case and stated that if he were “the one to do this, [NE#1 would] be all over me.” OPA commenced an investigation.

OPA reviewed this Complaint as well as the CAD, Incident/Offense Report, BWV, and surveillance video (Building Video) from the Downtown Emergency Service Center (DESC) building in which both the Complainant and Assailant resided (the DESC Building). OPA also interviewed the Complainant and both Named Employees.

### ***Factual Overview***

Although the varying sources of evidence in this case are broadly consistent, there are significant factual inaccuracies and discrepancies in the Incident/Offense Report that require more thorough discussion below.<sup>1</sup> However, a brief factual overview of undisputed facts is provided here for clarity.

In overview, on July 3, 2021, NE#1 responded as the primary officer to the DESC Building after DESC staff called 911 to report that two residents were fighting in the lobby. Witness Officer #1 and Witness Officer #2 also responded as secondary officers. After arriving at the DESC Building, NE#1 spoke with the DESC staff member who called 911 (Community Member #1), a second DESC staff member (Community Member #2), the Complainant, and the Assailant. NE#1 also reviewed portions of the Building Video with Community Member #1 and Community Member #2. After screening the incident with a sergeant (Witness Supervisor #1) over the phone, NE#1 decided to write the incident up as a CBO—listing the Complainant as the victim and the Assailant as the Suspect—for the “prosecutors [to] make the charging decisions.” After leaving the scene, NE#1 called NE#2 to “screen the bias elements in the incident.” NE#1 then returned to the DESC Building to offer the Complainant the opportunity to speak with a supervisor about bias allegations the Complainant made earlier. The Complainant informed NE#1 that he had already complained to OPA. NE#2 later approved the Offense/Incident Report and it was forwarded to the Seattle City Attorney’s Office for prosecution.

#### ***a. Computer Aided Dispatch (CAD)***

The CAD indicated that Community Member #1 called 911 to report that two DESC Building residents were in a physical fight in the lobby and that one of the residents had “broken glass in a bag.” NE#1 was assigned as the primary officer, while Witness Officer #1 and Witness Officer #2 were secondary units. The call was also updated with reports that Community Member #1 was “trying to separate involved parties who are still in [fight],” and that the involved parties were “following each other around, punching each other.” The two suspects were identified by the apparent race, apparent sex, and clothing. These descriptions matched the Complainant and Assailant.

#### ***b. Incident/Offense Report***

Following the incident, NE#1 generated an Incident/Offense Report, which was approved by NE#2 and forwarded to the Seattle City Attorney’s Office for prosecution. In the Incident/Offense Report, NE#1 completed a detailed narrative section. Although broadly consistent with the overview above, the Incident/Offense Report also included, among other things, the following details, not all of which were accurate.

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<sup>1</sup> See Subsection c., “Incident/Offense Report” below (setting forth statements made in Incident/Offense Report); Subsection g., “Interview with Named Employee #1” below (Named Employee #1 acknowledging inaccuracies); and Named Employee #1, Allegation #4 (itemizing inaccuracies).



The Incident/Offense Report states that that, following a verbal altercation, the Assailant “slapped” the Complainant across his face. The Incident/Offense Report also characterizes the “physical altercation” as continuing inside the building and that the Complainant “was following [the Assailant] around very closely and made multiple comments to her, based on the video he made it difficult for her to leave.” The Incident/Offense then states that “the altercation” continued and that the Complainant put the Assailant “into a headlock and dropped her directly onto the ground” and that the Complainant and Assailant were “exchanging blows at different points in this altercation.” The Incident/Offense Report states that Community Member #1 then took a bag with broken glass in it from the Assailant and that this prompted the Assailant to punch Community Member #1 in the face, breaking his glasses. The Incident/Offense Report specifies that the Building Video was reviewed and that Community Member #1’s “description of the incident was consistent with the video footage.”

NE#1 also wrote in the Incident/Offense Report that he screened the incident with Witness Supervisor #1 and that it would be “up to the prosecution if they would like to press charges for this incident.” NE#1 then wrote, “[b]ased on my observation of the security video, I believe that the physical altercation was mutual, and they continually escalated one another.”

The Incident/Offense Report describes the Complainant as having no visible injuries and that “[m]edics checked [the Complainant] out and stated that he was fine.” The Incident/Offense Report also states that NE#1 spoke with the Complainant who was not satisfied with the decision to use the CBO program for this incident. According to the Incident/Offense Report, the Complainant stated that the Assailant made “multiple bias statements towards him” including calling him the “n-word.” The Incident/Offense Report also states that the Complainant claimed that, if the “roles were reversed officers would have arrested him.” According to the Incident/Offense Report, the Complainant also told NE#1 that “he never struck [the Assailant] and only put her in a headlock to hold her down.”

NE#1 wrote in the Incident/Offense Report that he initially left the scene but screened the bias elements with NE #2.

***c. Body Worn Video (BWV)***

OPA reviewed BWV from NE#1, Witness Officer #1, and Witness Officer #2.

NE#1’s BWV recorded his investigation and resolution of this incident. Among other things, NE#1’s BWV recorded the following relevant details.<sup>2</sup>

After arriving at the DESC Building, NE#1 spoke with Community Member #1, who confirmed that he did not want to press charges against the assailant, but instead wanted her to get mental health treatment. NE#1 then entered the DESC Building and met with the Complainant, who told NE#1 to “[j]ust go look at the camera” and “she assaulted me, go check out the camera.” After requesting medical attention for the Complainant, NE#1 went with Community Member #1 to watch the Building Video.

As the Building Video was being located, NE#1 asked Community Member #1 what had happened. Community Member #1 stated “well, first, [the Assailant] struck [the Complainant] first...she was not moving away...he wasn’t

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<sup>2</sup> The details in subsection d. are from Named Employee #1’s BWV. As these details are video and audio recorded, they are not in dispute and are recited in subsection d. without repeated attribution to their source—Named Employee #1’s BWV.



doing anything to her, she kept hitting him and then she hit him with her bag...which had, I guess a bottle or something in it..." Community Member #2 also added that "[the Complainant] wasn't backing down but he wasn't really an aggressor." NE#1, Community Member #1, and Community Member #2 then watched the Building Video. While watching the Building Video, NE#1 and Community Member #1 had the following exchange:

**CM1:** ...he took the bag away from her...

**NE1:** ...he's kind of escalating her as well by following her around...

**CM1:** ...At this point she's punched him in the face several times...

**NE1:** ...right, but he was following behind her...

**CM1:** ...he was saying he wanted to make sure...she didn't go anywhere till the cops came.

Community Member #1 and Community Member #2 also told NE#1 that the Assailant hit the Complainant first and that this happened outside the DESC Building. Community Member #1 also told NE#1 that "[the Assailant] keeps punching [the Complainant], we keep trying to separate them...at some point she punches me."

The BWV also captured NE#1 screening the call with Witness Supervisor #1. NE#1 told Witness Supervisor #1 that the Complainant and Assailant were arguing with each other when the Assailant "slaps" the Complainant in the head, which started the fight. NE#1 also characterized the interaction as "mutual combat," that "the female is really small" and the Complainant put the Assailant in a headlock, dropped her to the floor, and struck the Assailant a few times.

Finally, the BWV captured the following relevant exchanges between NE#1 and the Complainant.

**NE1:** Okay []. I will document this, write a report, and refer the charges to the prosecutor and if the prosecutor decides to press charges, she will be booked that way, but at the moment we can't take her for the situation.

**Complainant:** Why not?

**NE1:** That's just how the law works right now.

**Complainant:** That's not how the law works...if I had assaulted her, you would have took me to jail.

**NE1:** That's not true.

**Complainant:** It is true...it happens like that with a lot of black people, she was yelling racial slurs and everything...you seen how she hit me with a bag a glass in my face. She hit this guy (Community Member #1)...knocked his glasses off and broke em...and there's nothing you can do about it until they want to press charges.

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**NE1:** I did watch the video as well...at some point I saw you hit her as well...

**Complainant:** I didn't hit her...I put her on the ground so when you all got her, you could take her to jail.

**NE1:** ...you put her in a headlock.

**Complainant:** I put her on the ground so you could get here, you can do that. The police told me you could do that. I was waiting on you. Get out of my face...



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***d. Building Video***

The Building Video does not have any sound and, because the incident occurred in several locations outside of and within the DESC Building, is recorded on several cameras at different angles.<sup>3</sup>

In one angle, the Building Video shows the Assailant and the Complainant walking into the DESC Building, with Community Member #1 nearby. The Assailant is holding a black bag. Twice, the Assailant points her finger directly in the Complainant's face. Both times, the Complainant grabs the Assailant's wrist and moves her hand out of his face. The Assailant then strikes the Complainant in the face with a closed fist. The Complainant, Assailant, and Community Member #1 then all walk off camera.

In a second angle, the Assailant is holding a black bag walking towards an elevator in the DESC Building and the Complainant is following her. A short time later, the Assailant swings her bag against the elevator twice and liquid is observed spilling out of the Assailant's bag. The Assailant then swings her bag at the Complainant, striking him in the back of his head. The Complainant grabs the Assailant, walks her backwards, and pushed her. The Assailant lands on her buttocks and the Complainant then holds the Assailant down. After another individual enters the area, the Complainant steps away and allows the Assailant to get up. The Assailant then swings her bag at the Complainant again, hitting him on the right side of his face. The Complainant then put the Assailant in a headlock, swings the Assailant to the floor, and rips her black bag away from her. The Complainant and Assailant then walk out of camera range.

In a third angle, the Assailant tries to strike the Complainant—who is now holding a black bag—by swinging her hand at the Complainant's face but appears to only graze the Complainant's face. Community Member #1 is standing nearby holding a phone. The Complainant, Assailant, and Community Member #1 then walk off camera.

In a fourth angle, the Assailant appears to swing and/or strike the Complainant—who is holding a black bag—twice. The Complainant then walks into the front lobby area of the DESC Building with the black bag.

In a fifth angle, the Complainant, Assailant, and Community Member #1 are in the DESC Building lobby. The Complainant has a black bag and the Assailant is following him. The Complainant then gives the black bag to someone through the lobby window. The Complainant then holds onto the Assailant's upper arms and walked her out of the room. The Assailant then begins striking the door before pushing the door open. A short time later, the Assailant begins hitting the lobby window, before turning and striking Community Member #1 in the face, knocking off Community Member #1's glasses, breaking them.

In none of the Building Videos reviewed by OPA did the Complainant ever strike or hit the Assailant.

***e. Interview with Complainant***

The Complainant was interviewed by OPA. According to the Complainant, he was in the lobby of the DESC Building when the Assailant came out. The Complainant said that he had words with the Assailant who then "cold-cocked him ... just socked [him] right in the eye." The Complainant said that someone told him not to hit her and he did not hit her. The Complainant said that the Assailant kept "punching [him] on his face" and that the Assailant "hit the front

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<sup>3</sup> The details in section e. are all taken from the Building Video.



desk guy.” The Complainant also said that the Assailant hit him in the face with a purse full of glass and punched him five times as hard as she could. The Complainant alleged that that NE#1 only looked at the cameras for “a quick minute,” that he felt he had been assaulted with a deadly weapon, but that NE#2 told him it was only a misdemeanor.

The Complainant stated that he took the purse away from the Assailant because she had already hit him with it in the face or head twice. Relatedly, the Complainant stated that he put the Assailant in a headlock, put his knee on her chest, and held her on the ground in order to detain her for the police, because Community Member #1 was on the phone with 911 at the time. However, the Complainant said that he let her up after people nearby told him to and then turned the purse in at the front desk so that the Assailant would not continue to use it as a weapon.

The Complainant said he contacted OPA because he got hit in the face with a bag full of glass and “no one seemed to think it was anything because I’m black, and my skin is tough, and you can pound on me, and I don’t show scars.” The Complainant also articulated that, at that time, he had a blurry spot in the side of his eye that had lasted for about a week. The Complainant also stated that he had a “little red mark” under his eye, “chubbier” cheeks, and that a “white light shoots up and down his right eye” after the assault. The Complainant did not take any pictures of his injuries. However, the Complainant believed that the incident did not leave a mark on him because of the color of his skin, stating “if it was a white guy, or a little Asian guy who got hit that hard with a bag full of glass, you would have seen marks on his face and would have taken [the Assailant] to jail...I didn’t have any marks because I’m black.”

The Complainant articulated that he is complaining that NE#1 did not physically arrest the Assailant and that “if that was someone else that was a different race or anything...and...was beat up, [the police] would have taken [the Assailant] to jail.” The Complainant also felt that it was inappropriate for the Assailant to get a CBO because that meant that the police had already determined that what happened was only a misdemeanor. The Complainant stated that the Assailant should have been custodially arrested and a prosecutor should have made the determination as to whether it was a misdemeanor or a felony. Finally, the Complainant stated that the entire incident was captured on video, but that NE#1 did not take enough time to investigate as he could not have viewed all the recordings in the amount of time that he watched the videos. The Complainant speculated that perhaps NE#1 was “burned out” with how many incidents occur at the DESC Building.

***f. Interview with Named Employee #1***

NE#1 was interviewed by OPA. During his interview, NE#1 was shown the Building Video and his BWV. NE#1’s description of the incident was broadly consistent with the factual overview above, but OPA comments on the following aspects of his statement.

First, NE#1 acknowledged that key portions of his Incident/Offense Report were inaccurate. He explained that he found it “difficult to obtain all the camera angles at the moment, given the scope of the situation, and the overall impression that officers have in the [DESC Building]. So while, it’s true I could have done a more thorough investigation at that moment, it just clouds you emotionally.” Moreover, NE#1 acknowledged that his interview with the Complainant was inadequate and that he did not ask the Complainant or Community Member #1 certain relevant follow-up questions. Also NE#1 admitted that he did not look inside the black bag (to confirm the presence of broken glass), take any photographs, or secure a copy of the Building Video.

Second, several of NE#1’s explanations for this incomplete investigation—while plausible—inadequately explain the shortcomings. For example, NE#1 explained that his characterization of the Complainant and Assailant “exchanging





blows” in the Incident/Offense Report referred to the Complainant putting the Assailant in a headlock. NE#1 also explained that he based the description in the Incident/Offense Report of the Complainant “verbally escalating [the Assailant]” on the Building Video, which did not have any audio. A final example is that NE#1 explained his failure to take any photographs—which he admitted would have been helpful to a prosecutor—was because “at the moment when I was investigating, my perspective on the investigation was different.”

Finally, when confronted with inaccuracies in his Incident/Offense Report, NE#1 stated that—in addition to his clouded emotional state caused by being in the DESC Building—he found the information he was receiving from witnesses at the DESC Building “quite confusing.” However, when asked by the OPA investigator whether he did anything to sort out the confusing information, NE#1 responded “No, I didn’t realize it was a problem at the moment. It’s difficult at the moment to know, but in hindsight, when you’re looking back and you have the luxury of all the surveillance video, and the luxury of having a place to investigate and look through it, you can come to a more accurate conclusion.” Similarly, when asked why he didn’t follow up with information provided by the Complainant and both Community Member #1 and Community Member #2 that tended to establish that the Assailant assaulted the Complainant—hence, that the incident was not one of “mutual combat”—NE#1 stated it “[p]ossibly slipped my mind at the moment.”

Throughout his interview with OPA, NE#1 provided two consistent explanations for inaccuracies in his Incident/Offense Report. The first related to the generally apprehensive and rushed feeling that NE#1 experienced while he was inside the DESC Building. The second related to his general inexperience at the time of the incident approximately six months after completing his field training. NE#1 also described his field training process as “extended” because it occurred during the summer 2020 protests and COVID-19 pandemic. Consequently, NE#1 stated that he “barely got experience working the streets” and was “basically doing chores around the Precinct” during his field training period.

#### ***g. Interview with Named Employee #2***

OPA interviewed NE#2. NE#2 stated that she has worked for SPD for over 28 years and regularly worked in follow-up units at the time of the incident but was augmenting for patrol on the incident date.

NE#2 related that there was another sergeant working the same shift as her—Witness Supervisor #1—and that the two of them were supervising 19 officers. NE#2 stated that the shift was extremely busy and included a call for a “DOA” (dead-on-arrival).

NE#2 confirmed that she approved NE#1’s Incident/Offense Report but stated that NE#1 screened the incident with Witness Supervisor #1. Moreover, NE#2 never responded to the DESC Building. NE#2 stated that, later, she received a call from NE#1 to “screen a bias situation with me.” NE#2 stated that, based on her recollection, the bias allegation was a “male-female situation.” NE#2 stated that she instructed NE#1 to return to the DESC Building and inform the Complainant that a “supervisor would like to talk to him.” However, NE#2 stated that, shortly after that NE#1 called her back and related that the Complainant had “basically told him to pound sand.”

NE#2 stated that, after NE#1 returned to the precinct, she instructed NE#1 to submit a bias Blue Team and that she called the Complainant and spoke to him. NE#2 recalled that the Complainant explained he had already called OPA. NE#2 also recalled speaking to the Complainant about the incident, explaining why the Assailant was not physically arrested, and telling him that the complaint “would still be forwarded to the prosecutor’s office.”



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***5.140-Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged that NE#1 engaged in biased policing due to his race and gender.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140-POL.) This includes different treatment based on the race of the subject. (*See id.*)

The Complainant raised two similar but distinct bias allegations. The first is that, had his role been reversed with the Assailant’s, then a custodial arrest would have taken place due to the differences in their genders. The second is that, had the Complainant been a different race, then a custodial arrest would have taken place because a physical injury would have been apparent.

Despite other missteps by NE#1, which will be discussed below, NE#1 appears to have taken appropriate action under the circumstances by using the CBO program. Although NE#1 completed an Incident/Offense Report containing some important inaccuracies, NE#1’s report accurately listed the Assailant as the suspect and the Complainant as the victim. This was forwarded to the City Attorney’s Office for further investigation and prosecution. Also, the assault in this case—although understandably upsetting for the Complainant—was most appropriately categorized as a misdemeanor because of the apparent lack of injury and the fact that the Assailant’s bag was not readily capable of “causing death or substantial bodily harm.” Finally, the Complainant and Assailant were not in a domestic relationship and the assaultive behavior had terminated by the time the officers arrived. In such a situation, it was entirely appropriate to use the CBO program regardless of the respective races or genders of the involved parties.

Instead of being motivated by bias, some evidence suggests that NE#1 was motivated by a desire to resolve this incident quickly. In his interview with OPA, NE#1 repeatedly referenced his feelings of apprehension while inside the DESC Building and, on his BWV, made statements to both the Complainant and Community Member #1 suggesting that he was “short on time” and needed to “act fast.”

The Complainant’s claim of bias based on his race appears premised on his belief that his skin tone disguised the extent of his injuries. First, there is no evidence to suggest that NE#1 or the SFD medics who observed the Complainant ignored obvious injuries. Second, based on the nature of the assault viewed on the Building Video, SFD’s assessment of the Complainant, and BWV footage of the Complainant after the assault, OPA finds that the Complainant could not have sustained an injury sufficient to justify a felony charge in this incident. Moreover, even if the Complainant’s contention were true—that is, that it was more difficult to see the extent of his physical injuries due to his skin tone—this would not make NE#1 or SFD’s inability to perceive the extent of the injury motivated by bias.

However, OPA cannot conclusively say that the Complainant’s allegation of gender-based bias is unfounded. First, NE#1 repeatedly injected his characterization of the incident as “mutual combat,” even in the face contradictory video evidence and direct pushback from two third-party witnesses—Community Member #1 and Community Member #2—both of whom told him that the Assailant was the aggressor. Second, two of the inaccuracies in the Incident/Offense Report suggest that gendered stereotypes could have affected NE#1’s perception of this incident. NE#1 told Witness





Supervisor #1 and recorded in the Incident/Offense Report that the Assailant “slapped” the Complainant, despite there being no evidence to suggest that a “slap” ever occurred. NE#1 also recorded in the Incident/Offense Report that the Assailant and the Complainant “exchanged blows” at different point in the interaction, even though the male Complainant never hit or struck anyone. Finally, in screening the incident with Witness Supervisor #1, NE#1 stated “the female is really small.”

Accordingly, OPA recommends that this allegation be Not Sustained (Inconclusive).

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #1 - Allegation #2**

***5.001-Standards and Duties 5.001-POL 6. Employees May Use Discretion***

The Complainant alleged that NE#1 used unreasonable discretion when he decided to use SPD’s CBO program instead of physically arresting the Assailant.

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

As discussed above for Named Employee #1, Allegation #1, this situation was an appropriate use of SPD’s CBO program. NE#1 erred by failing to conduct a thorough and complete search for evidence which, in turn, affected the accuracy of his reports and his compliance with the CBO procedure. These missteps are most appropriately addressed by the specific allegations below and were not an abuse of discretion.

Accordingly, OPA recommends that this allegation be Not Sustained (Lawful and Proper).

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegation #3**

***15.180-Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

The Complainant alleged that NE#1 failed to conduct a thorough and complete search for evidence.

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (*Id.*)

Implicit in this policy—and SPD Policy 15.180-POL-5, below—is that officers must take the time necessary to search for, collect, and comprehend the import of relevant evidence and witness statements. Where officers receive information that suggests the existence of other evidence that is not impractical to collect, policy requires the officer to seek and collect that evidence as well.



The evidence that NE#1 failed to conduct a thorough and complete search for evidence in this matter is substantial. Commendably, NE#1 largely acknowledged these failures during his OPA interview and expressed a desire to improve, noting “[s]eeing all the new perspectives offered the video footage, it really opened my eyes to what I missed in an investigation.”

Here, NE#1 acknowledged that he did not adequately interview the participants and witnesses to this incident. Specifically, in the future, NE#1 stated that he should “ask more questions.” OPA agrees. Among other things, NE#1 did not: (1) ask the Complainant, Community Member #1, or the Assailant any follow-up questions about the black bag; (2) ask the Complainant to elaborate on the justifications he offered for taking the Assailant to the ground and putting her in a headlock; (3) take a statement from Community Member #2; or (4) ask the Complainant any follow-up questions about his allegation that the Assailant used racial slurs against him.

In addition to these specific omissions, OPA directs NE#1 to two additional aspects of his approach to collecting evidence from witnesses in this matter. The first is that NE#1 did not direct any witnesses—most notably Community Member #1 or Community Member #2—to provide a chronological narrative of what they observed. Instead, these key witnesses mostly provided NE#1 with undirected snapshots of information, principally while walking to the office or reviewing Building Video. Although NE#1 attributed much of his failure to gather evidence on a lack of time and not having “the luxury of all the surveillance video, and the luxury of having a place to investigate and look through it,” these were exactly the things that NE#1 had when he was alone in the DESC Building office with Community Member #1 and Community Member #2. Instead, NE#1 spent a substantial portion of his time in the office standing in relative silence while Community Member #1 looked through surveillance video. Second, NE#1 gave insufficient weight to statements from Community Member #1 and Community Member #2—arguably the most neutral parties in the interaction—that directly refuted his belief that the Complainant and Assailant were engaged in mutual combat. Instead, NE#1 seemed nearly unshakable in his belief that this incident constituted mutual combat and that the Complainant was culpable in escalating the incident.

NE#1 also made almost no effort to collect the substantial amount of physical evidence available to him in this case. First, and most importantly, the evidentiary value of the Building Video was obvious—the entirety of the altercation was captured on multiple camera angles. Both the Complainant and Community Member #1 also alerted NE#1 to the fact that the Building Video would have captured relevant portions of the incident and NE#1 himself purported to rely on the Building Video to complete the narrative of his Incident/Offense Report. Second, NE#1 should have asked to see the places the Complainant claimed to be injured and documented the presence, or absence, of any injuries with a photograph. Finally, NE#1 should have sought the Assailant’s consent to search her black bag or, barring that, secured the bag as evidence of a crime, specifically since NE#1 had ample evidence that it was used as a weapon to assault the Complainant. At the very least, NE#1 could have looked at the exterior of the black bag—which was presumably still in the DESC Building office—with his BWV activated or taken a photograph of the exterior of the black bag.

In this instance, NE#1’s failure to conduct a thorough and complete search for evidence undermined his ability to fully understand the incident and, consequently, generate a “complete, thorough and accurate” report. See SPD Policy 15.180-POL-5. This failure—as well as the failure to preserve physical evidence—is particularly damaging in a case utilizing the CBO program because a prosecutor needs accurate information and relevant evidence to make an informed charging decision, possibly well after the fact.



NE#1 offered two explanations for his missteps in this matter. First, NE#1 made several statements to OPA outlining his apprehension with being in the DESC Building and “officers’ overall perspective on the [DESC Building] and we feel the longer we stay there the more in danger we become.” To the extent these feelings caused NE#1 to rush or in any way truncate his investigation of this specific case for that reason, OPA is unmoved. Police work often requires officers to gather evidence in uncomfortable environments and from people—frequently even the victims of crime—who may be hostile to the police. Moreover, OPA observed nothing in NE#1’s BWV that would have suggested he was in any specific danger at any point while inside the DESC Building. Finally, as NE#1 pointed out at multiple points in his interview, two other police officers responded to the DESC Building with him.

OPA is sympathetic to NE#1’s second explanation, that his relative inexperience and disrupted field training program impacted his handling of this incident. Also, OPA believes that NE#1 commendably acknowledged his errors in this case and is confident that he will make a greater effort to thoroughly investigate his cases going forward. However, OPA cannot find that NE#1’s omissions did not amount to misconduct because they were too numerous and important to the resolution of this assault case.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

#### **Named Employee #1 - Allegation #4**

##### ***15.180-Primary Investigations 15.180-POL 5. Officers Shall Document all Primary Investigations on a Report***

The Complainant alleged that NE#1 failed to generate a “complete, thorough and accurate” report for this incident.

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. All reports must be complete, thorough, and accurate. (SPD Policy 15.180-POL-5.) Lastly, the Department’s expectation, which has been clearly conveyed to officers, is that this report will be.

Because he did not conduct a thorough and complete search for evidence, *see* SPD Policy 15.180-POL-1, NE#1’s Incident/Offense Report for this incident was riddled with inaccuracies and mistaken assumptions. Many of these have already been discussed, but, among other things, the Incident/Offense Report wrongly stated that: (1) Community Member #1 took the Assailant’s bag; (2) statements within the report were “consistent with the video footage,” when NE#1 did not actually review all the footage and certain statements were not consistent with the Building Video; (3) the Complainant “exchanged blows” with the Assailant; and (4) the Assailant “slapped” the Complainant. Similarly, the Incident/Offense Report also omitted details that should have been included, specifically: (1) the Complainant’s justification for putting the Assailant in a headlock; and (2) Community Member #1’s statement that the Complainant was following the Assailant “to make sure she didn’t go anywhere until the cops came.”

No evidence suggests, and OPA does not believe, that these inaccuracies were a result of any dishonesty on the part of NE#1. NE#1 also spoke with OPA candidly and freely admitted that he made a number of mistakes during this incident. Instead, these inaccuracies appear to stem entirely from NE#1’s failure to conduct a thorough and complete search for evidence. That is, the information in NE#1’s report could not be “complete, thorough, and accurate” because NE#1 did not make adequate efforts to collect and understand all of the evidence. Therefore, this allegation is most fairly understood as duplicative of Named Employee #1, Allegation #3 above.



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Accordingly, OPA recommends that this allegation be Removed.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #5**

***15.020-Charge-By-Officer (CBO) 15.020 - PRO - 1 (Utilizing CBO) Officer***

The Complainant alleged that NE#1's use of the CBO program violated procedure.

SPD Procedure 15.020-PRO-1 sets forth six steps for an officer using the CBO program to complete.

As discussed above, NE#1 exercised appropriate discretion by employing the CBO program in this case. However, NE#1 made two minor procedural errors. First, NE#1 did not include the required phrase "I recommend this completed misdemeanor investigation of Suspect/(suspect's full name) be referred to the Seattle Law Department for the crime of (name of crime and SMC)." Second, SPD Policy dictates that a CBO shall not be used for "crimes that require follow up by a detective (including the recovery of in-store video." Both the CBO policy and procedure also reference that it should be used for after the investigation is "completed." As reviewed extensively, this investigation was not "completed" because NE#1 did not recover—or make arrangements to recover—the Building Video, even though he could have done so.

Additionally, in his OPA interview, NE#1 appeared to misunderstand the situations in which a CBO was appropriate. Specifically, he stated that a CBO could be used in a number of situations in which a CBO would, in fact, be forbidden.

OPA believes that these errors were technical in nature, not a willful violation of policy amounting to misconduct. Accordingly, OPA recommends that this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with him, review SPD Policy 15.020 and SPD Procedure 15.020-PRO-1 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegation #1**

***15.020-Charge-By-Officer (CBO) 15.020 - PRO - 1 (Utilizing CBO) Sergeant***

The Complainant alleged that NE#2 failed to adequately supervise NE#1's use of the CBO program.

SPD Procedure 15.020-PRO-1 sets forth the steps for a sergeant reviewing an officer's use of the CBO program to complete. Specifically, the sergeant is directed to review the report and, for incidents where the suspect was detained, completed a Sergeant Arrest Screening Supplement.

As set forth in Named Employee #1, Allegation #5 above, NE#1 made several technical errors in his use of the CBO program here. These errors should have been corrected by NE#2. NE#2 acknowledged her error to OPA stating, "I



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guess I failed to put my patrol Sergeant hat on when I reviewed the report.” OPA is sympathetic to NE#2’s explanation that she was volunteering as a patrol supervisor and failed to correct these technical mistakes.

OPA believes that these errors were technical in nature, not a willful violation of policy amounting to misconduct. Accordingly, OPA recommends that this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with her, review SPD Policy 15.020 and SPD Procedure 15.020-PRO-1 with NE#2, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained (Training Referral)**